



January 5, 2001

Ms. Erin Perales  
General Counsel  
Houston Municipal Employees Pension System  
1111 Bagby, Suite 1450  
Houston, Texas 77002-2546

OR2001-0030

Dear Ms. Perales:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142882.

The Houston Municipal Employees Pension System (the "system") received a request for the following information: (1) "monthly securities lending earnings and loan volume reports since 10/31/99"; (2) "the current custody/securities lending contract with State Street Bank, including all attachments and amendments"; and (3) certain portfolio values. You state that you have released information relating to the first and third categories of the request. However, you claim some of the information relating to the second category is excepted from disclosure under section 552.104 of the Government Code. Furthermore, you indicate that the requested information may invoke the proprietary rights of a third party, State Street Bank and Trust Company ("State Street"). Accordingly, pursuant to section 552.305 of the Government Code, you have notified State Street of the request for information in order to afford it an opportunity to submit objections to release of the requested information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). In turn, State Street has submitted arguments to this office, claiming that the information is excepted under section 552.110 of the Government Code. We have considered the arguments of the system and State Street and have reviewed the submitted information.

State Street claims that the requested information is excepted under section 552.110(b) of the Government Code. Section 552.110(b) excepts from public disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained ...." In support of its argument, State Street contends:

In addition to the knowledge that public dissemination of individual fee structures in competitive service based markets has been known to lead to decreased provider revenues in the short run and decreased client service in the long run, State Street also has knowledge that various consulting groups may use this information to advise clients as to what possible bids could be entertained, thus further diluting any competitive advantage.

Based on this argument, and our review of the information, we agree that the compensation and fee schedules attached to the contracts are excepted from disclosure under section 552.110. We have marked the information that must be withheld. However, we do not believe State Street has shown that any of the remainder of the information is excepted from disclosure under section 552.110. *See* Gov't Code § 552.022(a)(3) (contracts with governmental body expressly made public); *see also* Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Furthermore, neither the system nor State Street raised any additional exceptions to disclosure for the remaining information.

In summary, while you must withhold the marked compensation and fee schedules, you must release the remainder of the information. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/er

Ref: ID# 142882

Encl: Submitted documents

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